

The Mountain Torch



AUGUST 2010
NEWSLETTER

Pride Festival 2010



June 6
Charleston

THANKS TO ALL THE
MEMBERS AND FRIENDS
WHO PARTICIPATED IN THIS
GREAT EVENT!!

Always Free??

By Frank Crabtree
Executive Director



The test of tolerance comes when we are in a majority; the test of courage comes when we are in a minority. – Ralph W. Sockman

Only a small percentage of U.S. citizens can claim ancestry with Native Americans, or with those brought here against their will in slavery. The rest of us descended from immigrants -- persons leaving behind lives of poverty, victims of political or religious intolerance, people searching for a better place to live, work, and raise a family.

The coming together of cultures, religions, and aspirations on these shores forged a government based on the rights of all people to equal treatment and due process under the law. This confluence of disparate influences and ideas has long been deemed the strength of America -- a point of national pride and tolerance.

The anti-immigrant sentiment flaring up in Arizona and spreading to other states threatens the very fiber of this American 'quilt,' and thwarts the democratic principles of equal protection and due process. This newly stoked fire of intolerance seeks to erode the very freedoms that enable its expression. But it also offers a teaching moment, if we care to listen, about how fear and the intolerance it produces can test the fundamental precepts of our Constitution.

Arizona's new immigration law, SB 1070, exemplifies how xenophobia and its common manifestation -- racism -- can challenge the values of an open society. The measure, though enjoined in part at the moment, requires local police officers to demand a person's immigration documentation and

enforce immigration laws while engaging in routine police work (i.e., "your papers, please").

To be clear, the policeman's demand for proof of immigration status on the spot can occur without probable cause to believe the person has committed a crime. It can be based solely on the officer's (undefined) "reasonable suspicion" that the person is in the country illegally. One can only imagine this law being enforced in West Virginia, where already persons of color are one-and-one-half times more likely to be stopped on state highways than their white counterparts.

Alarming, the Arizona statute allows local law enforcement, untrained in the complexities of immigration law, to rely on their own bias and to compel anyone who looks foreign to confirm their identity and citizenship on the spot. (Could you do that?) The law makes all AZ Latinos (30% of the state's population) potential criminal suspects, including those who are already citizens, those who are working on their citizenship, or those here on a work permit. One is compelled to ask: on what basis other than race or ethnicity would a garden-variety police officer in Arizona suspect that a person was in this country illegally?

Fortunately, major provisions of the law have been enjoined for the moment, based on the Court's perception that they cause a "substantial likelihood" of wrongful arrests. The Court has also found:

Requiring Arizona law enforcement officials and agencies to determine the immigration status of every person who is arrested burdens lawfully present aliens because their liberty will be restricted while their status is checked.

As you might expect, the ACLU (with several other rights groups) was early on the scene in Arizona, arguing that this extreme measure is unconstitutional and will cause harassment of innocent people. Encouragingly, the Obama Justice Department followed suit, and filed suit, asserting that Arizona's attempt to create and enforce its own unique immigration laws subjects numerous residents to risk of improper and erroneous arrests, and violates the Constitutional allocation of authority between federal and state governments.

At this juncture, the lawsuits in Arizona appear to have a good chance of success. Unfortunately, however, they may not serve as an adequate warning to other state officials eager to mimic Arizona's wrongheaded lead by passing extreme and un-American laws.

Already the virus of intolerance has mutated into Virginia where both the Governor and the Attorney General, relying on political resonance rather than legitimate need, have voiced their support for state police checks of everyone they stop -- for whatever reason -- for immigration status. (Better pack that passport the next time you head to Myrtle Beach, huh?). And get this: perhaps a couple dozen other states are considering similar legislation, making the outcome of the Arizona litigation critically important to civil liberties nationwide.

Lest we forget, laws that encourage racial and ethnic profiling violate constitutional guarantees of equal protection and freedom from unreasonable searches. They 'chill' free speech rights of people who may be perceived as *foreign* based on their language or accent.

While the crime and violence

(Continued on page 7)



Please Join Us!

American Civil Liberties Union of West Virginia Foundation 2010 Bill of Rights Celebration

Saturday, October 2, 2010
Woman's Club of Charleston
1600 Virginia St. E.

Reception 5:30 p.m. Buffet 6:30 p.m.

Keynote: Former Supreme Court Chief Justice Larry V. Starcher

Honorees: Daniel F. Hedges
William N. Denman

Silent Auction



This year the Auction will include another spectacular metal sculpture from West Virginia's own civil libertarian and artist extraordinaire Mark Blumenstein. His whimsical steel piece – *No Spring Chicken* (pictured) – will delight ticketholders and the many collectors of Blumensteins.

Other works donated to this celebration of civil liberties include an exquisite landscape by photographer G. P. Cooper of Cooper Gallery in Lewisburg; a Robert C. Byrd Memorial panoramic photograph by photographer and filmmaker Doug Chadwick of Hillsboro; an original work from the amazing mind of visual artist Charly Jupiter Hamilton of Charleston; an intriguing work by photographer Laurie Cameron of Pocahontas County; and several other items and services.

Out of the Fryin' Pan And Into the Fire!

Taking on Law Enforcement Reform in WV

By Seth DiStefano, Field Organizer

“Do the police need a warrant before they run up on my front porch and drag my grandson into their car?”

“I was listening to what you said about what a warrant had to look like, and they surely didn't have one.”

During the past two summers, ACLU of West Virginia has travelled the state putting on several “Know Your Rights” seminars. The program consists of a straightforward PowerPoint presentation that outlines what (and what not) to do when you are confronted by law enforcement in West Virginia. An ACLU staffer (usually yours truly) walks participants through different scenarios where an individual might be confronted by law enforcement and offers options on how best to assert your rights in each situation. It was at one of these events this summer in Huntington, West Virginia where an elderly woman asked me the preceding question.

The “Know Your Rights” initiative grew out of ACLU-WV's campaign to address and eliminate racial profiling in the Mountain State. We figured if some police are going to brazenly target people based on their race, a good place to focus our efforts would be through educating anyone and everyone we could on how to properly assert their rights when it happened. The events, I will attest, have been successful. Audiences engage and leave armed with the information they need to protect themselves. However, just as one problem begins to see a little light, several others have reared their ugly heads. Here are some of the situations we are hearing about too often while out on the road:

A young lady out with her friends found herself in a confrontation with local law enforcement one evening. She decided to do what most kids would in a situation where they are uncertain. She tried to call her parents on her cell phone. Upon seeing that she had reached for her phone, one of the officers in question (according to her claims) grabbed the phone out of her hand and threw it on the concrete sidewalk so hard that it shattered. “Are they allowed to do that?” she asked.

At a seminar in Fairmont, the issue of “courtesy stops” was brought to my attention. There had been a recent shift in the leadership within a local law enforcement agency, and they wanted to reach out to the

community. Hey, that's great! Community forums hosted by law enforcement are great ways to build the necessary trust police need to do their jobs effectively. Where do I show up? A local senior center? Perhaps a church? Well, not really. Instead of going through the hassle associated with setting up an event and holding yourself accountable to the public, this particular agency decided the best way to introduce themselves to the public was to pull them over, walk up to their vehicle stopped on the side of the road and say “Hi.” According to many of the participants at our recent Fairmont seminar, a polite request to search their vehicle usually followed. Wow!

“OK, I've done all the things you have told me to do, and the police don't pay any attention. They just keep on harassing me.”

Unfortunately, this is the one I hear the most. It seems as if far too many cops in West Virginia are ignoring citizens' respectful (and constitutional) requests to be secure in their own persons, privacy, and property from government intrusion. People all over West Virginia are telling me that they demand to see a warrant only to have the police barge into their house anyway. They assert their right to refuse a consent-based search of their vehicle only to have the police engage in coercive tactics, and they politely ask, when stopped on the street, if they are free to go only to be treated as if asserting their rights somehow makes them wrong.

No matter how you cut it, there are serious problems above and beyond racial profiling within the ranks of West Virginia's law enforcement community. The lack of trust and stories we are confronted with on our travels across the state are nothing short of startling. As of this writing, ACLU of West Virginia plans to make law enforcement reform a major priority within our public policy advocacy efforts, and we need your help to make it happen. Stay tuned for more updates on this critical issue, and, as always, thank you for your activism.

Tolerance scores TKO in Charleston!



Any card carrying member of this organization is all too familiar with the antics of anti-equality, right wing activists like the “National Organization for Marriage.” Over the last couple of years, ACLU of West Virginia has played a critical role in making sure that legislation aimed at permanently ensconcing discrimination in our state constitution via a ballot initiative “defining marriage” has not received any significant traction. That hasn’t stopped the purveyors of said policies from doing whatever they can to market their intolerant message to the public, and this summer, West Virginia was chosen as a pit stop on the “Summer for Marriage” tour sponsored by NOM and their local supporters.

Alas. What was supposed to be a watershed moment for intolerance in West Virginia actually turned out to be a great day for tolerance. Co-sponsored by ACLU of WV, Fairness WV and WV FREE, the pro-equality “Rally for All Families” was staged simultaneously with the NOM event on August 11 just down the street at the Living AIDS Memorial Garden. Unlike NOM’s, our event included families of all varieties, music, food, and messages of inclusion.

Our staff witnessed both events and reported the score as follows:

Pro-equality rally for all families — well over 100 at its peak!!

Anti-equality “rally” — 28 attendees (if you include curious onlookers, a few members of the press and the Capitol Police who have to be there every day, they still didn’t break 40.)

Once again, the good people of the Mountain State have stated their preference for civility and tolerance. The numbers speak for themselves.



**August 11
Charleston**



Thank You Northern Panhandle Chapter!

The ACLU of WV staff would like to send their special thanks and appreciation to all of the members of the Northern Panhandle Chapter for hosting the recent Board of Directors Meeting. In conjunction with the Board Meeting, Frank Calabrese sponsored a picnic and boat ride on the Ohio River for members and staff.

Thanks to everyone in the Northern Panhandle Chapter who assisted with these events!



Please Donate to the Fund for Justice



Frank Crabtree, executive director of the ACLU of WV, discusses the Citizens United v. Federal Elections Commission decision with a group of participants at a Civil Liberties Gathering in Huntington at the home of Clay McNearney. Civil Liberties Gatherings/Receptions have been hosted in Harper's Ferry, Huntington and Princeton recently as part of the Fund for Justice Campaign to raise money for the ACLU of WV Foundation's legal and educational programs, as well as for the new Youth Activist Scholarship Fund.

The ACLU of WV Foundation's annual Fund for Justice Campaign is underway to raise funds to support its legal and educational programs, as well as the Youth Activist Scholarship Program. ACLU members in Harper's Ferry, Huntington and Princeton, have recently hosted Civil Liberties Gatherings/Receptions so members have the opportunity to gather socially, receive an update on current programs and issues, and make tax deductible donations to the ACLU of WV Foundation.

If you would like to host a Civil Liberties Gathering/Reception at your home or office, please contact Nancy Nelson Hill at (304) 345-9246. If you would like to make a contribution online to the Fund for Justice, go to acluwv.org and click on Contribute, then specify Fund for Justice in the Comment Section. You may also mail contributions to: ACLU of WV Foundation, P.O. Box 3952, Charleston, WV 25339-3952. Contributions to the ACLU of WV Foundation are tax deductible to the extent permitted by law under IRS Tax Code 501 (c)(3).

New Staff Member

The ACLU of WV is pleased to have Melissa Johnson as the new administrative assistant. Melissa, who is a senior majoring in business at West Virginia State University, joined the staff on March 23 and has been invaluable in helping with a variety of projects and offering technical support to the staff.



“I love working with the ACLU of WV because of the people,” Melissa said. “I hope to someday open a computer assistance business because I feel there is such a need in Charleston to help individuals, companies and non-profit organizations with computer support.”

Law Student Intern

Amanda Hutchison, a second-year law student at the William and Mary School of Law, served as the intern for the ACLU of WV Foundation this summer. Amanda researched a variety of subjects this summer and helped with an FOI request regarding the Fusion Center.



“Working for the ACLU is what I’ve always wanted to do,” Amanda said. “I am currently the president of the ACLU chapter at my law school and I hope to locate in Virginia or West Virginia after I graduate and work for the ACLU. I have a special interest in death penalty issues.”

Amanda is from Elkview.

Always Free? (Continued from p. 2)

along the Arizona-Mexico border is real and must be resolved by the federal government, the Arizona law does nothing to make the area safer. It goes after the people who fail to carry their “papers,” and actually undermines public safety by further eroding trust between the Latino community and law enforcement. It discourages witnesses and victims of crime from coming forward and working with police.

On one level, it is ironic that anywhere in modern America a state law gives police unprecedented authority to demand “your papers please” – the very practice we condemn and abhor in “non-democratic” countries. On another level, the Arizona dispute gives those of us in other states an opportunity to prepare for a similar attack on civil liberties by those who will not tolerate the very diversity of cultures envisioned and protected by our national charter -- the Constitution.

West Virginia is not a “border state” (although the border with Virginia just became problematic). It does not have Hispanic or Latino ‘issues’ like Arizona, notwithstanding a significant immigrant presence in the Eastern Panhandle. But as the immigration debate evolves and demagogues fan the flames of

fear and intolerance, we must be ready to SPEAK UP AND OPPOSE ARIZONA-TYPE LEGISLATION. Immigration and all other law enforcement must be humane and non-discriminatory. It must be carried out by trained federal officers in a uniform manner. It simply must not encourage racial profiling, a scourge still plaguing our society here in the Mountain State.

The test of tolerance is coming to West Virginia and we in the majority must be ready for it.

Know Your Rights When Encountering Law Enforcement

Would you like to know more about what to do when confronted by law enforcement? Be a leader in your community and help us organize a “Know Your Rights Seminar at a local venue. ACLU of WV Foundation will provide PowerPoint materials and the speaker.

To set up a presentation, phone (304) 345-9246 or email us at mail@acluwv.org.

MAKE PLANS NOW TO ATTEND!

ACLU of WV ANNUAL MEMBERSHIP MEETING

**Sunday, February 20, 2011
Charleston Woman's Club**

We're really excited to announce that our featured speaker is **Franz Boening, ACLU-WV board member and former employee of the Central Intelligence Agency**. As an agent handler and analyst, Franz became well acquainted with CIA 'culture', and in 1994 filed the CIA's first whistleblower complaint concerning misleading statements a senior CIA official had made to a member of Congress with regard to the failed Human Right Information Act. Franz retired from the CIA in 2005, and began actively supporting the ACLU as a result of our strong stand against torture. Franz will talk about this decision and CIA's secretive culture. You won't want to miss it!



P O BOX 3952
CHARLESTON, WV 25339-3952
(304) 345-9246

mail@acluwv.org
www.acluwv.org

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